

THE HONORABLE THOMAS S. ZILLY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

LVB-OGDEN MARKETING, LLC,
Plaintiff,

v.

DAVID S. BINGHAM, SHARON
BINGHAM, CHRISTOPHER BINGHAM,
CHERISH BINGHAM, KELLY BINGHAM,
BINGO INVESTMENTS, LLC, CCRB
ENTERPRISES, LLC, SKBB
ENTERPRISES, LLC, PARK PLACE
MOTORS, LTD., HYTECH POWER, INC.,
HENRY DEAN, in his individual capacity and
as Trustee for the SHARON GRAHAM
BINGHAM 2007 TRUST, and BGH
HOLDINGS, LLC,

Defendants.

No. 2:18-CV-00243-TSZ

PLAINTIFF'S SUPPLEMENTAL BRIEF

Pursuant to the Court’s August 17, 2018 Order, Plaintiff LVB-Ogden Marketing, LLC (“LVB”) submits the following supplemental brief:

A. Issue #1: The Prior Judgments Are Not A Bar to LVB’s Recovery For Many Reasons In Law & Equity.

Issue #1 directs the parties to address two other judgments (the “Umpqua Judgment” and “Centrum Judgment”) referenced in parts of the record before the Court. ECF 132 at 2. Defendants’ suggestion that somehow these judgments render LVB’s efforts futile should be rejected outright. In stark contrast to that position, these judgments are not a defense to LVB’s claims and recovery for several, independent reasons: (i) a judgment lien only attaches to *real property*, so nearly all of the assets LVB seeks (including any cash that the Trust holds) are unaffected by the prior judgments; (ii) judgments are property that can be seized, like other assets, to satisfy another judgment, and thus a finding that the Trust lacks a spendthrift defense would permit LVB to seize the Umpqua and Centrum judgments, just as it could any other asset of the debtors; (iii) LVB has priority over the Centrum judgment; and (iv) any liens imposed by these judgments on the Trust’s or Sharon Bingham’s real property are invalid, as a party cannot hold a lien on his own property, especially where, as here, this is done in an effort to defraud creditors. Each of these points, discussed in detail below, is sufficient to destroy Defendants’ false assertion that these judgments are a defense to LVB’s claims.

Critically, the Court need not even rule on these “priority” issues to enter judgment on all of LVB’s claims. Under Washington law, other creditors’ claims are irrelevant unless and until LVB institutes execution proceedings and levies on the debtors’ assets that are subject to competing liens—it is only then that parties claiming interests in those assets are required to intervene and challenge LVB’s priority, as discussed below. But even if the Court could somehow issue an advisory opinion on these “priority” issues before they are presented, “priority” would fail as a defense for all of the reasons noted above and below.

1 **1. The Debtors' Personal Property Is Unaffected By The Other**
2 **Judgments, Which At Most, Only Attach To Real Property.**

3 While throughout this litigation, the Defendants have implied that somehow *all assets* are
4 encumbered by the judgments held by the Trust,¹ that is plainly belied by Washington law. RCW
5 4.56.190, which governs judgment liens, makes clear that judgments attach *only* to real property,
6 and not personal property. RCW 4.56.190 (stating that a “judgment shall be a lien” on non-exempt
7 “real estate of any judgment debtor,” explicitly excluding the debtor’s “personal property”); *see*
8 *Woodworth v. Edwards*, 3 Wash. 2d 579, 586 (1940) (citing *Phoenix Mining & Milling Co. v.*
9 *Scott*, 20 Wash. 48 (1898)) (explaining that a judgment lien only attaches to real estate, and not
10 personal property). Indeed, Defendants have admitted that “[i]n Washington, entering or
11 registering a judgment may create a lien on real property, but it does not create a lien on personal
12 property.” (ECF 39 at 7-8.)

13 Thus, even if the Trustee’s judgments did impose valid liens (as discussed *infra*, they do
14 not), they could only attach to the debtors’ real property. The debtors’ personal property, which
15 constitutes *nearly all* of the property LVB seeks to seize, is not encumbered by the Trustee’s
16 claimed judgments at all. *See* RCW 4.56.190. This includes such personal property as: stock in
17 companies, wedding rings and other jewelry, bank accounts, cash, jet skis and boats, furniture, art,
18 sports equipment, sports cars, financial instruments, electronics, and ownership interests in
19 entities. Indeed, the debtors have only disclosed three real property assets in Washington: a house
20 in Bellevue, a house in Hunts Point, and a house in Sammamish. *See, e.g.*, ECF 83; Ex. B (7-29-
21 16 Ltr. to IRS) (“Sammamish residence in which Mr. Dean resides” and noting Ginger Atherton is
22 his “life partner”). All other property at issue is personal property. Once this Court declares that
23 LVB is entitled to assets nominally held by the Trust and/or issues an order voiding the fraudulent

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25

26 ¹ *E.g.*, Hr. Tr. (May 3, 2018) at 94:9-12 (“There is nothing that’s been discussed today that wasn’t exempt and
wasn’t encumbered.”); *see* ECF 134 (Order) at 6 (“Defendants argue that because these judgments have priority
over LVB’s Judgment, LVB cannot recover *any money* even if it is successful in penetrating the Trust’s spendthrift
restraint.”) (emphasis added); ECF 36 at 17.

transfers at issue, LVB will be free to immediately execute all of those assets, and neither the Umpqua Judgment nor the Centrum Judgment would prevent it.

2. Even If The Umpqua And Centrum Judgments Imposed Valid Priority Liens, LVB Can Seize Those Judgments And Become Lienholder.

Even for real property, and even if the Trustee's judgments attach, LVB can seize those judgments and become the lienholder. Under Washington law, creditors are entitled to execute "all property" of a judgment debtor, absent an explicit exception. RCW 6.17.090 ("All property, real and personal, of the judgment debtor that is not exempted by law is liable to execution."). Judgments themselves fall within this broad category of executable property. *Johnson v. Dahlquist*, 130 Wash. 29, 31-33 (1924) (holding that a judgment is executable); *see also* RCW 6.17.160 (providing procedures for executing on "a claim on which suit has been commenced"); *Ikuno v. Yip*, 912 F.2d 306, 314 (9th Cir. 1990) ("Choses in action are not legislatively exempt from execution [under Washington law]."). Thus, LVB can execute on another judgment held by a debtor. *Johnson*, 130 Wash. at 31-33.

As LVB has demonstrated (and will present a trial), the Sharon Graham Bingham 2007 Trust is not a valid, protectable spendthrift trust, and thus LVB can seize the assets held by the Trust as property of beneficiary and debtor Sharon Bingham. ECF 4 at 15-17; ECF 82 ¶¶ 23-91; *see* ECF 137. Once the Court holds accordingly, LVB will be entitled to seize the Trust assets, including the Umpqua and Centrum Judgments. With possession of those judgments, LVB will automatically become lienholder as to any real property to which those judgments attach, and will have the same priority as the original creditors and the Trustee. *See* RCW 6.17.090; *Johnson*, 130 Wash. at 31-33. These judgments, even if valid, are therefore wholly irrelevant to LVB's claims and ability to seize the debtors' assets.

3. LVB's Judgment Has Priority Over The Centrum Judgment.

Even if LVB could not seize the Trustee's judgments and become lienholder (it can), it undisputedly has priority over the Centrum Judgment with respect to non-homestead property.² A federal judgment filed in the county where the debtor's property is located, like LVB's judgment here, imposes a lien superior to later judgments entered in that county. RCW 4.56.200(1) ("[For] [j]udgments of the district court of the United States rendered or filed in the county in which the real estate of the judgment debtor is situated," the judgment lien on real property "shall commence . . . from the time of entry or filing thereof"). LVB's judgment was issued on September 29, 2010 by the U.S. District Court for the Northern District of Illinois. ECF 82 ¶ 27, Ex. C. Two weeks later, on October 15, 2010, LVB registered its judgment in the District Court for the Western District of Washington, which is located in the same county where three houses owned by the debtors' are located. (*Id.* ¶ 29, Ex. D.) Again, Defendants have admitted that "Plaintiff acted prudently in 2010 when it registered its \$70 million judgment entered by the U.S. District Court for the Northern District of Illinois [] in the Western District of Washington. As a result of that registration, Plaintiff's Judgment became a lien on all the Judgment debtors' property in the Western District." ECF 39 at 4. They have also admitted that "[t]he Centrum Judgment was entered years after Plaintiff's Judgment." ECF 39 at 6.

Thus, LVB's judgment takes priority over the Centrum Judgment with respect to non-homestead property. RCW 4.56.190; (*see* ECF 39 at 4-5 (Defendants conceding, "[LVB's] lien rights . . . attach and follow all transfers of the Judgment debtors' non-homestead real property through all transfers to the 2007 Trust or other third parties.")). The debtors' non-homestead real property includes, at the very least, the property located at 721 250th Lane NE, Sammamish, WA, 98074, which is not occupied by its owner (as explained above, because the Trust is not a valid

² As for the Umpqua Judgment, the Trustee has not established that it actually holds a \$23,290,953 judgment. At most, documents in the record reflect that Umpqua Bank assigned \$2,664,018.81 of the Judgment to the Trust at the time of settlement, and released the Bingham from the remaining amount. *See* ECF 132 (Order) at 2 (citing a partial assignment of the Umpqua judgment); ECF 38-1 at 84-86 (partial assignment of \$2,664,018.81 to the Trust); Ex. A (Umpqua Settlement Agreement), attached hereto.

spendthrift trust, its property belongs to beneficiary Sharon Bingham); rather, Henry Dean apparently uses it as his residence for free. ECF 83; *see* ECF 16 (proof of service) (2-15-18 service accepted by Ginger Atherton at 721-250th Lane Northeast); RCW 6.13.010. This 5-bedroom, 5.5 bathroom, 6,950 square foot house on 5 acres of property is currently valued at over \$4 million dollars.³

4. The Trustee and Debtors Cannot Hold Liens on Their Own Property, Especially Where Used As A Mechanism To Defraud Creditors.

Even if LVB could not seize the judgments, the Trustee's claims independently fail because the liens on the Trust's and Sharon Bingham's real property, to the extent they exist, are invalid. It is well established that "[o]ne cannot have a lien on their own property, except where equity interposes[.]" *Gould v. Day*, 94 U.S. 405, 413 (1876); *In re Marriage of Edwards*, 139 Wash. App. 1039, at *5 (2007) ("[A] person cannot lien their own property."). This rule is premised on the fundamental principle that a lien exists to secure an underlying debt, *Sullins v. Sullins*, 65 Wash. 2d 283, 285 (1964) ("[A] lien is an encumbrance upon the property as security for the payment of a debt."); one cannot owe himself a debt, and therefore there is no debt to form the basis of a lien on one's own property. *Fed. Land Bank of Omaha v. Boese*, 373 N.W.2d 118, 121 (Iowa 1985) ("[A]n essential element in establishing a lien is showing a debt or an obligation of the landowner. This element cannot be satisfied when a property owner claims a lien on his own real estate because an owner cannot owe himself a debt.").

Thus, generally, where a party purchases a judgment or indebtedness against himself that imposes a lien on his property, the underlying "debt and the rights based upon it are extinguished." *See Home Indemn. Co. v. McClellan Motors, Inc.*, 77 Wash. 2d 1, 5 (1969) ("An assignment of a claim from a creditor to the debtor is, in legal effect, a satisfaction and payment of that claim. To the extent that claim is thus assigned, the debt and the rights based upon it are extinguished."); *accord Gould*, 94 U.S. at 413. While some courts recognize a narrow exception to this rule for

³ *See* <https://www.redfin.com/WA/Redmond/721-250th-Ln-NE-98074/home/8186089>

1 certain assignments where the owner does not intend for a lien to be extinguished, such an
 2 exception does not apply where equity prevents it. *Summy v. Ramsey*, 53 Wash. 93, 99 (1909)
 3 (“Whether a merger [of the lien and property interest] will be recognized in equity depends upon
 4 the interests of the parties and the surrounding circumstances.”); *In re Roussos*, No. CV 17-552-
 5 JFW, 2017 WL 2259674, at *7 n.12 (C.D. Cal. May 23, 2017) (“[I]t is a fundamental principle that
 6 ‘the doctrine of merger is to be applied in a manner calculated to prevent injustice, injury and
 7 prejudice to the rights of innocent third persons[.]’”) (citation omitted). And “[e]quity will never
 8 allow . . . a mortgage or other security to be kept alive, when this result would aid in carrying a
 9 fraud or other unconscious wrong into effect, under the color of legal forms.” *Summy v. Ramsey*,
 10 53 Wash. 93, 99 (1909) (citation omitted).

11 Here, the Trustee purports to hold liens on the Trust’s own property. ECF 83. Under the
 12 above authority, such liens are invalid. The same will be true once the Trust is held to be an
 13 invalid spendthrift trust: Sharon Bingham will hold liens on her own property (e.g., “Bellevue
 14 Residence”). *Id.* Nor does equity allow (in either case) the debtors to use the millions of dollars
 15 they hid from LVB to extinguish their debt owed to other creditors, and then claim those debts still
 16 exist to further impede LVB’s collection efforts. *Summy*, 53 Wash. at 99; *Gould*, 94 U.S. at 413.

17 **5. Issues of Lien Priority Are Not Yet Properly Before the Court.**

18 Importantly, the priority of LVB’s claim to the debtors’ assets need not be resolved until
 19 LVB actually executes upon the assets. In this action, LVB seeks (1) declarations as to its right to
 20 invade the Trust, deeming fraudulent transfers void, and directing payment of income to LVB; and
 21 (2) an order under the UFTA setting aside fraudulent transfers as void. ECF 82 ¶¶ 118, 121-30.
 22 Once these orders are issued, LVB may initiate execution proceedings to levy certain of the
 23 debtors’ assets. Under the Washington execution statute, once asserts that could implicate a
 24 judgment lien are levied, creditors that claim rights to the levied property bear the burden of
 25 asserting and establishing the validity of their rights. *E.g.*, RCW 6.29.030(1) (“An adverse
 26 claimant to property levied on may demand and receive the property from the sheriff who made

1 the levy, upon making and delivering to the sheriff an affidavit [and meeting other
2 requirements]”); RCW 6.19.030(2) (setting forth procedures for litigating the “probable validity”
3 of a third party’s claim to levied property); *Hauf v. Johnston*, 105 Wash. App. 807 (2001) (“[T]he
4 law places the burden on persons claiming an interest in the property that is adverse to the debtor
5 to prove what their interest is.”). The Court overseeing the execution proceedings will then
6 evaluate third party claims as to the property at issue. *See* RCW 6.19.030.

7 Thus, LVB’s claims can and should be decided, and judgment entered on its claims,
8 without regard to these “priority” issues. The Trustee’s claimed priority to any of the debtors’
9 assets will be litigated if and when LVB executes upon assets that implicate priority. In any event,
10 should the Court decide to take up this issue now, it can quickly dispose of the Trustee’s claim of
11 priority for the many reasons discussed above.

12 **B. Issue #2: LVB Needs an Order From the Court to Execute Upon the Assets**
13 **of CCRB and SKBB.**

14 Issue #2 directs the parties to address “[w]hether Plaintiff needs an order from this Court
15 before it can execute on the assets of Defendant CCRB Enterprises, LLC, SKBB Enterprises, LLC,
16 or any other assets outside of the Trust.” ECF No. 132 at 2. The answer is unquestionably yes.
17 Until the Court orders otherwise, LVB is only entitled to execute upon the assets of those
18 defendants named on the judgment: the Bingham and Bingo Investments. This is precisely why
19 the Defendants have used fraudulent shell entities like CCRB Enterprises and SKBB Enterprises
20 (as well as Henry Dean’s companies and accounts): to hold assets in ways that nominally avoid
21 judgment execution and defraud creditors. Am. Compl. ¶¶ 44-60. The Court has already observed
22 that CCRB is “a fraudulent shell created to avoid creditors.” 5/3/2018 Hearing Tr. at 82:24-25.
23 And that is the only conclusion that can logically be reached.

24 Indeed, Defendant Chris Bingham has admitted that CCRB has never been operated as a
25 business, and has always functioned as his personal bank account. ECF 5-20 (Dep. Excerpts). He
26 admitted that CCRB has no offices, no employees, and conducts no business. *Id.* He could not
recall CCRB holding any meetings, taking any minutes, taking any votes among the members, and

1 was not even certain who “managed” the company—despite the fact that CCRB has represented to
 2 the State of Washington that Chris Bingham is the manager. *Id.* The Trust—whose distributions
 3 are supposed to be made exclusively to Sharon Bingham—wrote checks to CCRB amounting to
 4 \$495,093 between February and July 2016 alone for the stated purpose of funding the installation
 5 of a pool at Chris and Cherish’s home in Hunt’s Point, Washington. Am. Compl. ¶¶ 44-54. The
 6 Trust also makes a monthly cash transfer of \$15,000 directly to “Chris Bingham/CCRB.” *E.g.*,
 7 Exs. 35-36. According to Mr. Bingham, he draws directly from CCRB’s bank accounts to pay his
 8 own personal expenses (and has always done that instead of using his personal checking account).
 9 ECF 5-20. This includes two recently-purchased Seadoo jet skis and a 2011 wakeboarding boat
 10 used exclusively by Chris’s children. *Id.*

11 SKBB, in the Trust accountant’s own words, “was set up at the same time [as CCRB] for
 12 the same purpose.” Am. Compl. ¶56. It was established around the same time, by the same
 13 individuals, and has been used for the same basic purpose: to funnel money to Scott and Kelly
 14 Bingham from Sharon’s Trust accounts in a way that cannot currently be garnished by creditors.
 15 *Id.* For example, on December 29, 2011, Scott Bingham emailed Cicilia Elali, the Trust
 16 accountant, informing her that he had been going through his bills and needed “\$17,000 and then
 17 there is my house payment on top of that,” and “I would like to have about \$3000 on top of that for
 18 food and Christmas stuff this month” and money for his wife to get him a birthday gift. He asked
 19 in total for \$26,000. That day, Elali responded that she would transfer the \$26,000 “today to
 20 SKBB.” *Id.* ¶ 58. The Bingham and their accountant brazenly joke in e-mails about the
 21 fraudulent nature of this scheme—direct evidence of actual intent to defraud. *Id.* ¶ 59 (“I just
 22 transferred the \$4500 for your bills into your SKBB account from your mom’s Trust as agreed.
 23 FYI these are being recorded as loans for now. Someday when you’re rich again, you can pay it
 24 back ☺.”).

25 Unless and until the Court orders otherwise, the Trustee will be able to continue
 26 perpetuating these frauds and illegally draining funds from the Trust accounts to these entities—or

1 to other shell entities controlled by the Bingham children that Defendants may establish to avoid
 2 the Court's earlier fraud observation. LVB is willing to submit whatever further briefing or
 3 evidence the Court wishes to support: (i) its entitled to judgment against CCRB and SKBB; and
 4 (ii) an order preventing the Trustee from transferring money to entities that hold money, or transfer
 5 money, for the benefit of any of the Binghams or the Trustee himself, rather than the beneficiary
 6 Sharon Bingham.

7 **C. Issue #3: Any Trial In This Matter Should Be Bifurcated**

8 Finally, Issue #3 asks the parties to address "[w]hether the Court should bifurcate the trial
 9 into two or more stages." ECF 132 at 2. Pursuant to Rule 42(b) of the Federal Rules of Civil
 10 Procedure, "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may
 11 order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-
 12 party claims." Fed. R. Civ. P. 42(b). The rule "confers broad discretion upon the district court to
 13 bifurcate a trial, thereby deferring costly and possibly unnecessary proceedings." *Travelers Prop.*
 14 *Cas. Co. of Am. v. Nw. Pipe Co.*, 2017 WL 4168501, at *2 (W.D. Wash. Sept. 20, 2017). Rule 57
 15 likewise permits the Court to "order a speedy hearing of a declaratory-judgment action." Fed. R.
 16 Civ. P. 57; *Tri-State Generation & Transmission Ass'n, Inc. v. BNSF Ry. Co.*, 2008 WL 2465407,
 17 at *7 (D. Ariz. June 17, 2008).

18 LVB has previously proposed a phased approach given the efficiencies involved, and as a
 19 way to expedite resolution of this case. ECF 97, 127. A similar phased approach can be
 20 accommodated under the Court's current schedule with some minor adjustments. A revised
 21 proposal is discussed below, and a Proposed Case Scheduling Order has been submitted
 22 concurrently with this brief.

23 **Phase 1: Trust's Purported Spendthrift Defense (Bench Trial).** LVB's Cause of
 24 Action No. 1 for Declaratory Judgment has seven components. Am. Compl. ¶ 118.a-g. With the
 25 Court's permission, LVB has already filed an early summary judgment motion on two of those
 26 components: (i) self-settled assets; and (ii) payments made to Sharon Bingham from the Fisher

1 Trust accounts. ECF 137; Am. Compl. ¶ 118.a, g. Four components are related to LVB's Cause
 2 of Action No. 2 for fraudulent transfers, which can be addressed with that cause of action as
 3 described below. Am. Compl. ¶ 118.c-f. This leaves the significant outstanding issue of whether
 4 the Trust is entitled to a spendthrift defense for any of the remaining assets that are not self-settled.
 5 Am. Compl. ¶ 118.b.

6 At the time the Trust was established, Sharon was both the sole beneficiary and sole
 7 trustee. Am. Compl. ¶ 30. Moreover, as the Court has already noted (see ECF 126 at 3 n.2),
 8 spendthrift protections can be forfeited by conduct (as they have been here).⁴ LVB has already
 9 documented evidence that Sharon controls how funds are distributed from the Trust, including
 10 deposition testimony from Defendant Chris Bingham, which destroys its spendthrift character.
 11 FAC ¶¶ 39, 41, 87, 113-15; ECF 4 at 15-17; ECF 5-20. LVB will also take further discovery to
 12 support that claim. There is no statute of limitations to seek a declaratory ruling that the Trust has
 13 lost spendthrift character, and thus none of the Trustee's unrelated arguments (which concern only
 14 the statute of limitations under the UFTA) would be relevant.

15 A ruling that the Trust's spendthrift defense is meritless could obviate the need for LVB to
 16 proceed with its fraudulent transfer claim *at all*, or dramatically pare it down. Since the fraudulent
 17 transfer claims (which are pleaded in the alternative as to the Trust) are the most fact-intensive and
 18 time-consuming to present to the Court and adjudicate, the potential to resolve the case without
 19 burdening the Court presents real efficiency savings. LVB could proceed to garnishment of the
 20 non-self-settled assets and quickly expedite resolution of the entire case. It would also eliminate
 21 the need for many additional days, if not weeks of testimony, on issues that are only relevant to
 22 LVB's fraudulent transfer claim.

23
 24 ⁴ *Accord* Restatement (Third) of Trusts § 58 (2003); *Matter of Marriage of Galando*, 200 Wash. App. 1030, at *16
 25 n.14 (2017) ("An intended spendthrift restraint is also invalid with respect to a nonsettlor's interests in trust
 26 property over which the beneficiary has the equivalent of ownership, entitling the beneficiary to demand
 immediate distribution of the property") (citation omitted); *Britannia Holdings Ltd. v. Greer*, 127 Wash. App. 926,
 935, 113 P.2d 1041 (2005) ("[I]f a beneficiary acquires the power to compel distribution of trust property, a
 spendthrift restraint will no longer prevent creditors from executing on the trust."); *In re White*, 61 B.R. 388, 393
 (Bankr. W.D. Wash. 1986) ("The beneficiary must not have such control over the funds so as to render them more
 in the nature of present savings than future income.").

Moreover, unlike LVB's fraudulent transfer claim, its declaratory judgment claim as to the Trust's spendthrift defense does not require a jury trial. *Dexia Credit Local v. Rogan*, 2009 WL 528902, at *3 (N.D. Ill. Mar. 2, 2009) (judgment creditor's right to property is an equitable remedy not subject to jury trial); *Hynix Semiconductor Inc. v. Rambus, Inc.*, 527 F. Supp. 2d 1084, 1103 (N.D. Cal. 2007) ("Whether a declaratory judgment action entitles a party to a jury trial depends on the nature of the claim from which it arises."). A phased approach would therefore avoid the additional time and burden on the Court and potential jurors of a jury trial.⁵

Phase 2: Fraudulent Transfer Claim (Jury Trial). As documented in detail in the Amended Complaint, LVB has already identified hundreds of separate fraudulent transfers. Am. Compl. App'x A. More are likely to come to light in discovery. If Phase 2 is necessary, LVB would have a right and obligation to present the evidence it has for each of these transfers, which would require a substantial investment of time and resources for the parties and the Court. In addition to the additional time and resources required for a jury trial, the fact-intensive fraudulent transfer claims would involve many additional fact and expert witnesses, hundreds if not thousands of additional potential exhibits, hundreds of pages of additional trial-related briefing, and would require many additional weeks to present to a jury for verdict. And all of it could potentially be avoided by a threshold ruling at the Phase 1 bench trial that may very well expedite resolution of the case.

LVB proposes that all of the existing discovery and dispositive motion deadlines remain in place except for the expert discovery deadline, which is subject to an *unopposed* request for that deadline to coincide with the close of fact discovery. ECF 138. For the trial dates currently set, including the deadlines for motions *in limine*, the pretrial order, trial briefs, and pretrial conference, LVB would propose that those dates be limited to the Phase 1 bench trial proposed above. Once that Phase is complete, or at some time closer to that date, the parties and the Court

⁵ Should the Court not fully grant LVB's motion for summary judgment on the self-settled and Fisher Trust components of LVB's declaratory judgment claim, those issues could easily be included in this trial phase as well for the same reasons.

1 can establish Phase 2 deadlines for these pretrial tasks and a Phase 2 trial if and only if Phase 2 is
2 necessary at that time. A Proposed Case Scheduling Order to that effect has been submitted
3 concurrently with this brief.

4 DATED: September 21, 2018

s/ William R. Squires III

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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